

STATEMENT OF CLARK KENT ERVIN BEFORE THE HOUSE OF
REPRESENTATIVES COMMITTEE ON GOVERNMENT REFORM,
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Mr. Chairman, Mr. Ranking Member, members of the subcommittee, thank you very much for inviting me to testify today on the critically important topic of whether, four years after 9/11, security gaps remain in our visa policy that can be exploited by terrorists. There is no question but that it is harder than ever before for terrorists to get a visa to enter the United States; before 9/11, it was relatively easy.

Back then, even though the law required State Department officers to interview visa applicants, this legal requirement was routinely waived. Though waivers were to be exceptional and interviewing applicants was to be the norm, in practice the reverse was true. Indeed, when an interview was granted it was usually for the purpose of giving an applicant who'd already been rejected on a first, documentary review a second chance to convince the State Department that he should be admitted to the country. And, we all know now about the notorious Visa Express program in Saudi Arabia, and like programs elsewhere, that allowed third-parties in foreign countries to review visa applications on the State Department's behalf. Further, State consular officers had limited access to information in other government agencies' databases indicating whether a given applicant might be a terrorist. There was nothing in the State Department's CLASS database indicating that any of the 9/11 hijackers was a terrorist, but there was information in other agencies' databases. Had that information been shared in a timely fashion with State, those terrorists might never have gained entry into the country.

Fortunately nowadays, there are no Visa Express programs. Most applicants are interviewed. Consular officers are better trained to spot terrorists and signs of fraud. The CLASS database contains 21 million records of known or suspected terrorists and other people who, for some reason, are ineligible for visas, nearly triple the number prior to the attacks. About 70% of the database is based on information passed to the State Department by the FBI, the CIA, and other law enforcement and intelligence agencies, so information sharing among relevant agencies is much better than it was four years ago.

But, gaps remain in the visa process that terrorists could easily exploit to deadly effect. First of all, the Visa Security Officer program provided for in the Homeland Security Act has not lived up to its promise. Since 15 of the 19 hijackers were from Saudi Arabia, this provision mandated the stationing of Homeland Security officers in Saudi Arabia to oversee State's administration of the visa issuance process to ensure that no more visas are issued to terrorists. The DHS officers sent were presumably to be expert in counterterrorism, fraud detection, interview techniques, and other relevant areas. The provision went on to say that "Visa Security Officers" should be dispatched to every visa issuing post in the world, unless the Secretary of Homeland Security can explain why stationing such officers in a given country would not contribute to homeland security.

When I looked into the VSO program last year as the then Inspector General of DHS, we found that it was not making much of a difference in Saudi Arabia. There were no designated VSO slots; the positions were filled by volunteers. And, the volunteers were serving only a temporary basis, resulting in a rapid turnover of personnel. And, the temporary volunteers were lacking in the basic skills they needed to be effective. For example, one officer had no law enforcement experience. Another had never worked outside the United States, and as a result, he had no idea how an embassy works. Another had no knowledge of the visa process. Only one of the 10 could speak Arabic. Even though the DHS and State Department officers were located just a few feet from each other, neither could access the others' databases, so both were inputting and then sending back to Washington for a background check essentially the same information. As a consequence, precious time was being wasted by the State Department, the Department of Homeland Security, their respective headquarters, and other key members of the U.S. law enforcement and intelligence communities, leaving the VSOs little time to do what they were supposedly uniquely competent to do – reviewing visa applications strictly from a counterterrorism perspective.

There have been some advances in the VSO program in Saudi Arabia. As for the temporary volunteer turnover problem, according to the recent GAO report on the subject, DHS hired and trained four permanent employees and deployed them to Saudi Arabia in June, and they are to stay there for a one year period. As for language ability, two of the four reportedly speak Arabic. I understand from other sources that the VSOs are no longer wasting time inputting the same data and transmitting it to Washington that consular officers at post have already input. But, while there's anecdotal evidence that VSOs have helped to keep terrorists out of the U.S., there's no hard and fast evidence of that because DHS has not kept track of any data that might shed light on it.

More troubling to me is that the program has yet to be expanded to any country other than Saudi Arabia. If VSOs are such an effective counterterrorism tool, if they have expertise and access to information that State consular officers don't have, it is critical that they be deployed to every visa issuing post throughout the world as quickly as possible. Otherwise, terrorists could slip into the country by obtaining a visa in any of the other nearly 200 countries with which the U.S. maintains diplomatic relations. While DHS intends to add five posts to the VSO program this fiscal year, the fiscal year is nearly over, and as far as I know, VSOs have yet to be deployed to any one of them. Indeed, as of a couple of months ago, according to GAO, only four of the five posts have approved VSOs for deployment. While DHS intends to expand the program at the rate of five posts at year, this is troubling because at that rate it will take about 40 years for VSOs to be deployed worldwide, giving terrorists plenty of time to apply for a U.S. visa from countries lacking the putative protections of the program.

In my judgment, we should make VSOs as effective as possible. They should, in fact, be expert in counterterrorism, fraud detection, interview techniques, and the like. They should have country and area expertise, and they should all be proficient in the local language. And, then they should be deployed throughout the world. We should not allow the State Department to exercise an effective veto over the expansion of the program by

subjecting the program to the NSSD 38 Chief of Mission Authority process by which our ambassadors are empowered to approve or deny other agencies' requests to have representation in the embassy. This process may be acceptable for the Agriculture Department; it is not for the Department of HOMELAND SECURITY. After all, a compromise was reached between State and DHS to allow State to continue to process visa applications and to issue visas only on the understanding that DHS would have the final say on visa issuance. The fear was that, absent the strong hand of a department focused exclusively on counterterrorism, the more diplomacy-oriented State Department might revert to a mindset that focuses more on diplomacy and customer service than counterterrorism.

Second, while the U.S. VISIT system as presently deployed is a major step forward in our decades long effort to develop a system to keep track of who enters and who exits our country through legal channels, it is operational at only 115 airports around the country and 14 seaports, with plans to be expanded to the 50 busiest land ports of entry by the end of the year, according to the latest information available to me. The gap, of course, is that a terrorist could enter the United States at a non-U.S. VISIT-serviced port of entry, and use a visa lent by or stolen from a person with a clean background. Because there'd be no way to match the biometrics of the traveler with those of the visa applicant, there'd be no way for the port of entry inspector to be sure that the traveler is in fact the person to whom the visa was issued. It is critical that U.S. VISIT be deployed to every port of entry as rapidly as possible, and that the exit feature, still only in the pilot stage, be made operational at every port of entry/exit. Otherwise, we might not be able to determine definitely whether known or suspected terrorists who somehow manage to slip into the country undetected and who are subsequently identified have left the country. Finally, it is good that Secretary Chertoff has recognized that a major security gap is the fact that the two finger scan U.S. VISIT system is incompatible with the FBI's 10 fingers based 47 million print database of suspected terrorists and criminals. At some point in the future, first time visitors will be required to submit ten fingers at U.S. VISIT ports of entry. But, for as long as it takes for this enhancement to be implemented, we will be depriving ourselves of information which might help to identify terrorists.

Thank you for this opportunity to testify today, and I welcome your questions.

Clark Kent Ervin
Director, Homeland Security Initiative
The Aspen Institute
(202) 736-1494
Clark.ervin@aspeninstitute.org